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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,190	11/18/2003	John D. Tanner	8518DCC	6231

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THE PROCTER & GAMBLE COMPANY
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EXAMINER

DRODGE, JOSEPH W

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/717,190	Applicant(s) TANNER ET AL.	
	Examiner Joseph W. Drodge	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>0204</u> . | 6) <input type="checkbox"/> Other: ____. |

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The disclosure is objected to because of the following informalities: The Specification is incomplete, since page 1 should have an introductory paragraph detailing serial numbers, filing dates, status as a continuation, divisional or continuation-in-part and patent numbers of all parent applications in the chain of applications extending to the instant application.

Appropriate correction is required.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-14 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-14 of prior U.S. Patent No. 6,649,045. This is a double patenting rejection.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,2,5-7 and 9-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 5,785,844. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following: In instant claim 1, "float which rises...falls" is an equivalent recitation to "a chamber...rising and falling fluid level...float" (claim 1 of '844).

Also, in instant claim 10, "means for counting...escapement mechanism wherein said float is advanced...float rises and falls" is equivalent to "means for counting...member moved by the water and...means, in cooperation with said fill-counting means, for providing a...visual indication" (claim 10 of '844)

Claims 3,4, and 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3,4 and 8 of U.S. Patent No. 5,785,844 in view of claims 3,4 and 8 of 5,882,507. Instant claims 3,4 and 8 substantially correspond to claims 3,4 and 8 of '507.

Claims 15-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,423,224. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are genus to the more detailed species claims of '224. However, the instant claims differ substantially only in omitting

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the language "tray and filter cartridge define a space without water treatment material through which treated water flows". Such space, however, is inherently present in the recitation of a tray and filter cartridge, since a common understanding of the term "tray" is a component which both supports and collects some amount of fluid from a container thereon.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Barnes patent 1,432,522.

Barnes discloses filter cartridge 3/21, upper inlet end 27, lower outlet end 21, water treatment filtering material (page 2, lines 14-19), detachable tray therebelow (page 1, lines 32-37 and 62-70), such tray providing for upwards flow towards an overflow outlet and filter cartridge inlet end when the faucet valve is closed (figure 2).

Concerning claims 16 and 19, figure 2 illustrates the tray being cup-shaped and attached by friction fit and overlapping flanges to the filter cartridge at its upper end at approximately the level of the inlet end to the filtering material portion of the cartridge as shown in figure 2.

Concerning claim 17, see in figure 2 the cup inner and outer wall that forms a deflector plate and side-wall overflow outlet 30-32.

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Concerning claim 20, gravity flow is occurring from upper chambers 4 and 5 into channel 19.

Apart from the various double patenting issues, claims 1-14 remain distinguished over the closest prior art, Eger et al patent 4,998,228, of record, by recitation of the float not only rising when the water treatment device is filled, but also falling after the water has been treated in combination with an escapement mechanism wherein the float is advanced along an escapement path each time the float rises and falls. In Eger, a float rises a small incremental amount after each useage of a gravity-fed water treatment device, however not falling after each treatment of the water.

Pending resolution of double patenting, claim 18 remains distinguished in view of recitation of the tray having a notch extending upwards from the tray bottom.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Drodge at telephone number 571-272-1140. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at 571-272-1151. The fax phone number for the examining group where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR, and through Private PAIR only for unpublished applications. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

August 11, 2004


JOSEPH DRODGE
PRIMARY EXAMINER